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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/940,711	08/27/2001	Satoshi Mizutani	2309/OJ753	5768

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EXAMINER

TORRES VELAZQUEZ, NORCA LIZ

ART UNIT PAPER NUMBER

1771

DATE MAILED: 02/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/940,711

Applicant(s)

MIZUTANI ET AL.

Examiner

Norca L. Torres-Velazquez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Arguments*

1. The amendment filed on November 11, 2003 has been entered and considered.
2. Applicants have amended the claims to recite the language - - layer(s) - - instead of "strip(s)" to better in order to more clearly define the claimed invention.

The Examiner has examined the amended claims and has further reviewed the specification. It seems from the drawings and the specification that applicants have an apertured film with a plurality of strips, where each strip comprises a plurality of fibrous layers, and where the strips are parallel and separate. The claim, as presently written, claims a plurality of fibrous layers, which are fastened at intervals but are also separate and allow the apertured film layer to show through. In the way the claim is written it is saying that the layers are separate and parallel but also that the layers are bonded at intervals, which does not make sense. The applicants are advised to revise the language, since it is not clear of what is being claimed.

For examining purposes, the Examiner is giving the following interpretation to the surface layer in light of the specification and from the interview with applicant's representative on October 31, 2003: the surface layer includes a porous film with a plurality of through holes and a layer of a plurality of strips that extend in parallel and completely separate from each other at predetermined spacing intervals. Further, that each strip is fixed to the porous film at spaced fixing portions and each strip comprises a plurality of fibrous layers. The porous film is exposed between adjacent rows of strips.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1, as presently written, claims a plurality of fibrous layers, which are fastened at intervals but are also separate and allow the apertured film layer to show through. In the way the claim is written it is saying that the layers are separate and parallel but also that the layers are bonded at intervals, which does not make sense. Is not clear of what is being claimed.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being obvious over FAHRENKRUG (US 4,891,258) in view of FURUYA et al. (US 6,646,178 B2).

The applied reference ('178) has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of

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invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). For applications filed on or after November 29, 1999, this rejection might also be overcome by showing that the subject matter of the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. See MPEP § 706.02(l)(1) and § 706.02(l)(2).

FAHRENKRUG teaches a stretchable absorbent composite 2 that comprises a liquid-permeable bodyside liner 4, a liquid-permeable stretchable or elastomeric layer 6, an absorbent medium 8 and a liquid-impermeable outer cover 10. The elastomeric layer 6 is made permeable by a plurality of apertures 12 disposed therein. (Column 3, lines 13-19; refer to Figures 1-4) The reference further teaches that the liquid permeable bodyside liner 4 can be a nonwoven web or sheet of polyolefin fibers. (Column 4, lines 14-20) The reference teaches that the elastomeric layer 6 can employ materials such webs of elastic films. (Column 4, lines 33-35) The reference further teaches the use of a transfer layer 22 which is preferably a nonwoven web. (Column 6, lines 37-41) The reference teaches that the transfer layer 22 is between liner 4 and elastomeric layer 6, and one of its purposes is to provide rapid fluid transfer in the Z-direction. (Column 6, lines 16-21)

The Examiner equates the elastomeric layer 6 with apertures 12 to the porous film with through holes of the present invention. The elastomeric layer 6 with the permeable bodyside liner 4 and transfer layer 22 is equated to the present surface layer. Layers 4 and 22 of FAHRENKRUG are two fibrous layers fixed to the porous film. (Refer to Figures 3 and 4). However, FAHRENKRUG fails to teach that the fibrous layers are in the form of strips extending in parallel and completely separate from each other at predetermined spacing intervals.

FURUYA et al. discloses an absorbent article including : a liquid permeable surface member ; a backing sheet ; and an absorbent layer interposed between the surface member and the backing sheet. The surface member includes an upper layer located at a liquid-receiving side surface and a lower layer located adjacent to the absorbent layer. The upper layer is formed of first continuous filaments. The lower layer is formed of second continuous filaments. (Abstract) The reference teaches the structure of the strips extending in parallel and completely separate to each other at predetermined spacing intervals in Figures 1 and 2. Further the reference teaches the use of tows. (Column 5, line 13)

Since both, FAHRENKRUG and FURUYA et al., are directed to absorbent composites, the purpose disclosed by FURUYA et al. would have been recognized in the pertinent art of FAHRENKRUG.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the fibrous layer and provide it with a strip configuration and that is fixed at spaced fixing portions with the motivation of providing a surface member with high liquid permeability and high rewet-preventing property as disclosed by FURUYA et al. (Column 2, lines 18-21).

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*Conclusion*

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

DUBE (EP 039502) – Column 3, lines 1-5

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 571-272-1484. The examiner can normally be reached on Monday-Thursday 8:00-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-0994.



Norca L. Torres-Velazquez  
Examiner  
Art Unit 1771

January 26, 2004